

AMENDED IN ASSEMBLY JUNE 29, 2004

AMENDED IN ASSEMBLY JUNE 14, 2004

AMENDED IN SENATE APRIL 27, 2004

AMENDED IN SENATE APRIL 16, 2004

SENATE BILL

No. 1568

Introduced by Senator Sher

February 19, 2004

An act to amend Section 11010 of the Business and Professions Code, to amend Sections 1103.4 and 1353 of the Civil Code, and to amend Sections 66637, 66638, ~~66639~~, 66640, and 66641.5 of, *and to add Section 66648 to*, the Government Code, relating to the San Francisco Bay Conservation and Development Commission.

LEGISLATIVE COUNSEL'S DIGEST

SB 1568, as amended, Sher. San Francisco Bay Conservation and Development Commission.

(1) Existing law requires any person who intends to offer subdivided lands within California for sale or lease to file with the Department of Real Estate an application for a public report consisting of a notice of intention and a completed questionnaire that includes, among other things, a statement that there is an airport in the vicinity, and that this may affect the use of the property. Existing law requires that a copy of the public report of the Real Estate Commissioner, when issued, be given to the prospective purchaser by the owner, subdivider, or agent prior to the execution of a binding contract or agreement for the sale or lease of any lot or parcel in a subdivision or upon request by any member of the public.

This bill would require the notice of intention filed with the application for a public report, to include a statement regarding whether the property is within the jurisdiction of the San Francisco Bay Conservation and Development Commission, and to provide a specified notice.

(2) Existing law limits the liability of a transferor for failing to disclose natural hazards in specified property transactions if the transferor obtains a report or opinion prepared by a licensed engineer, land surveyor, geologist, or expert in natural hazard discovery dealing with matters within the scope of the professional's license or expertise. Existing law conditions this limitation in specified ways, including the requirement that when an expert in natural hazard disclosure responds to a request regarding natural hazards, that the expert also determine whether the property is within an airport influence zone and, if so, provide a specified notice with his or her report.

This bill would condition the limitation on liability described above by requiring an expert in natural hazard disclosure, when responding to a request regarding natural hazards, to also determine whether the property is within the jurisdiction of the San Francisco Bay Conservation and Development Commission and to provide a specified notice.

(3) The Davis-Stirling Common Interest Development Act regulates common interest developments and defines the declarations and other governing documents that govern the operation of common interest developments and the associations that manage common interest developments. A declaration is required to contain specified information. Existing law provides that an owner of a separate interest in a common interest development must provide certain items to a prospective purchaser prior to transfer of title, including, among other things, a copy of the governing documents of the common interest development.

This bill would require that any declaration, recorded on or after January 1, 2006, contain a statement regarding whether the property is within the jurisdiction of the San Francisco Bay Conservation and Development Commission, and to provide a specified notice.

(4) Existing law establishes the area of jurisdiction of the San Francisco Bay Conservation and Development Commission.

This bill would ~~authorize the commission to make grants~~ *provide that fees collected by the commission pursuant to conditions imposed on permit applicants to mitigate the adverse impacts of permitted*



development, and any funds paid into the Bay Fill Clean-up and Abatement Fund, may be transferred to a specific subaccount of the San Francisco Bay Area Conservancy Program Account or to a similar account, with the concurrence of the conservancy, to be expended by the conservancy to mitigate the adverse impacts of development for which the commission issued the permit.

(5) Existing law requires a person or governmental agency to secure a permit from the commission if the person or agency wishes to place fill in, to extract materials from, or to make any substantial change in use of, any water, land, or structure within the area of the commission's jurisdiction.

Existing law authorizes the commission, and its executive director, to issue cease and desist orders in connection with activities that may require a permit or may be inconsistent with a permit, as specified. Existing law requires copies of the cease and desist order to be mailed to specified persons and agencies.

This bill would also require a copy of the cease and desist order to be sent by certified mail to the owner of the property on which the violation occurred.

(6) Existing law requires the Attorney General, upon request of the commission, to petition the superior court for an injunction, as specified, if a person fails to comply with a cease and desist order issued by the commission.

This bill would also require the Attorney General, upon request of the commission, to petition the superior court for an injunction, if a person fails to comply with a permit, a cease and desist order issued by the executive director, or other specified requirements.

(7) Existing law imposes civil penalties in specified amounts for violations of provisions relating to San Francisco Bay conservation and development.

This bill would increase the amounts for those penalties and would impose civil penalties for negligent violations.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 11010 of the Business and Professions
2 Code is amended to read:



1 11010. (a) Except as otherwise provided pursuant to
2 subdivision (c) or elsewhere in this chapter, any person who
3 intends to offer subdivided lands within this state for sale or lease
4 shall file with the Department of Real Estate an application for a
5 public report consisting of a notice of intention and a completed
6 questionnaire on a form prepared by the department.

7 (b) The notice of intention shall contain the following
8 information about the subdivided lands and the proposed offering:

9 (1) The name and address of the owner.

10 (2) The name and address of the subdivider.

11 (3) The legal description and area of lands.

12 (4) A true statement of the condition of the title to the land,
13 particularly including all encumbrances thereon.

14 (5) A true statement of the terms and conditions on which it is
15 intended to dispose of the land, together with copies of any
16 contracts intended to be used.

17 (6) A true statement of the provisions, if any, that have been
18 made for public utilities in the proposed subdivision, including
19 water, electricity, gas, telephone, and sewerage facilities. For
20 subdivided lands that were subject to the imposition of a condition
21 pursuant to subdivision (b) of Section 66473.7 of the Government
22 Code, the true statement of the provisions made for water shall be
23 satisfied by submitting a copy of the written verification of the
24 available water supply obtained pursuant to Section 66473.7 of the
25 Government Code.

26 (7) A true statement of the use or uses for which the proposed
27 subdivision will be offered.

28 (8) A true statement of the provisions, if any, limiting the use
29 or occupancy of the parcels in the subdivision.

30 (9) A true statement of the amount of indebtedness that is a lien
31 upon the subdivision or any part thereof, and that was incurred to
32 pay for the construction of any onsite or offsite improvement, or
33 any community or recreational facility.

34 (10) A true statement or reasonable estimate, if applicable, of
35 the amount of any indebtedness which has been or is proposed to
36 be incurred by an existing or proposed special district, entity,
37 taxing area, assessment district, or community facilities district
38 within the boundaries of which, the subdivision, or any part
39 thereof, is located, and that is to pay for the construction or
40 installation of any improvement or to furnish community or

1 recreational facilities to that subdivision, and which amounts are
2 to be obtained by ad valorem tax or assessment, or by a special
3 assessment or tax upon the subdivision, or any part thereof.

4 (11) (A) As to each school district serving the subdivision, a
5 statement from the appropriate district that indicates the location
6 of each high school, junior high school, and elementary school
7 serving the subdivision, or documentation that a statement to that
8 effect has been requested from the appropriate school district.

9 (B) In the event that, as of the date the notice of intention and
10 application for issuance of a public report are otherwise deemed
11 to be qualitatively and substantially complete pursuant to Section
12 11010.2, the statement described in subparagraph (A) has not been
13 provided by any school district serving the subdivision, the person
14 who filed the notice of intention and application for issuance of a
15 public report shall immediately provide the department with the
16 name, address, and telephone number of that district.

17 (12) (A) The location of all existing airports, and of all
18 proposed airports shown on the general plan of any city or county,
19 located within two statute miles of the subdivision. If the property
20 is located within an airport influence area, the following statement
21 shall be included in the notice of intention:

22
23 NOTICE OF AIRPORT IN VICINITY
24

25 This property is presently located in the vicinity of an airport,
26 within what is known as an airport influence area. For that reason, the
27 property may be subject to some of the annoyances or inconveniences
28 associated with proximity to airport operations (for example: noise,
29 vibration, or odors). Individual sensitivities to those annoyances can vary
30 from person to person. You may wish to consider what airport
31 annoyances, if any, are associated with the property before you complete
32 your purchase and determine whether they are acceptable to you.
33

34 (B) For purposes of this section, an “airport influence area,”
35 also known as an “airport referral area,” is the area in which
36 current or future airport-related noise, overflight, safety, or
37 airspace protection factors may significantly affect land uses or
38 necessitate restrictions on those uses as determined by an airport
39 land use commission.

1 (13) A true statement, if applicable, referencing any soils or
2 geologic report or soils and geologic reports that have been
3 prepared specifically for the subdivision.

4 (14) A true statement of whether or not fill is used, or is
5 proposed to be used in the subdivision and a statement giving the
6 name and the location of the public agency where information
7 concerning soil conditions in the subdivision is available.

8 (15) As to property located within the jurisdiction of the San
9 Francisco Bay Conservation and Development Commission, a
10 statement that the property is so located and the following notice:

11
12 NOTICE OF SAN FRANCISCO BAY CONSERVATION AND
13 DEVELOPMENT COMMISSION JURISDICTION
14

15 This property is located within the jurisdiction of the San
16 Francisco Bay Conservation and Development Commission. Use
17 and development of property within the commission's jurisdiction
18 may be subject to special regulations, restrictions, and permit
19 requirements. You may wish to investigate and determine whether
20 they are acceptable to you and your intended use of the property
21 before you complete your transaction.

22 (16) Any other information that the owner, his or her agent, or
23 the subdivider may desire to present.

24 (c) The commissioner may, by regulation, or on the basis of the
25 particular circumstances of a proposed offering, waive the
26 requirement of the submission of a completed questionnaire if the
27 commissioner determines that prospective purchasers or lessees of
28 the subdivision interests to be offered will be adequately protected
29 through the issuance of a public report based solely upon
30 information contained in the notice of intention.

31 SEC. 2. Section 1103.4 of the Civil Code is amended to read:

32 1103.4. (a) Neither the transferor nor any listing or selling
33 agent shall be liable for any error, inaccuracy, or omission of any
34 information delivered pursuant to this article if the error,
35 inaccuracy, or omission was not within the personal knowledge of
36 the transferor or the listing or selling agent, and was based on
37 information timely provided by public agencies or by other
38 persons providing information as specified in subdivision (c) that
39 is required to be disclosed pursuant to this article, and ordinary
40 care was exercised in obtaining and transmitting the information.



(b) The delivery of any information required to be disclosed by this article to a prospective transferee by a public agency or other person providing information required to be disclosed pursuant to this article shall be deemed to comply with the requirements of this article and shall relieve the transferor or any listing or selling agent of any further duty under this article with respect to that item of information.

(c) The delivery of a report or opinion prepared by a licensed engineer, land surveyor, geologist, or expert in natural hazard discovery dealing with matters within the scope of the professional's license or expertise, shall be sufficient compliance for application of the exemption provided by subdivision (a) if the information is provided to the prospective transferee pursuant to a request therefor, whether written or oral. In responding to that request, an expert may indicate, in writing, an understanding that the information provided will be used in fulfilling the requirements of Section 1103.2 and, if so, shall indicate the required disclosures, or parts thereof, to which the information being furnished is applicable. Where that statement is furnished, the expert shall not be responsible for any items of information, or parts thereof, other than those expressly set forth in the statement.

(1) In responding to the request, the expert shall determine whether the property is within an airport influence area as defined in subdivision (b) of Section 11010 of the Business and Professions Code. If the property is within an airport influence area, the report shall contain the following statement:

NOTICE OF AIRPORT IN VICINITY

This property is presently located in the vicinity of an airport, within what is known as an airport influence area. For that reason, the property may be subject to some of the annoyances or inconveniences associated with proximity to airport operations (for example: noise, vibration, or odors). Individual sensitivities to those annoyances can vary from person to person. You may wish to consider what airport annoyances, if any, are associated with the property before you complete your purchase and determine whether they are acceptable to you.

(2) In responding to the request, the expert shall determine whether the property is within the jurisdiction of the San Francisco

1 Bay Conservation and Development Commission, as defined in
2 Section 66620 of the Government Code. If the property is within
3 the commission's jurisdiction, the report shall contain the
4 following notice:

5
6 NOTICE OF SAN FRANCISCO BAY CONSERVATION AND
7 DEVELOPMENT COMMISSION JURISDICTION
8

9 This property is located within the jurisdiction of the San
10 Francisco Bay Conservation and Development Commission. Use
11 and development of property within the commission's jurisdiction
12 may be subject to special regulations, restrictions, and permit
13 requirements. You may wish to investigate and determine whether
14 they are acceptable to you and your intended use of the property
15 before you complete your transaction.

16 SEC. 3. Section 1353 of the Civil Code is amended to read:

17 1353. (a) (1) A declaration, recorded on or after January 1,
18 1986, shall contain a legal description of the common interest
19 development, and a statement that the common interest
20 development is a community apartment project, condominium
21 project, planned development, stock cooperative, or combination
22 thereof. The declaration shall additionally set forth the name of the
23 association and the restrictions on the use or enjoyment of any
24 portion of the common interest development that are intended to
25 be enforceable equitable servitudes. If the property is located
26 within an airport influence area, a declaration, recorded after
27 January 1, 2004, shall contain the following statement:

28
29 NOTICE OF AIRPORT IN VICINITY
30

31 This property is presently located in the vicinity of an airport,
32 within what is known as an airport influence area. For that reason, the
33 property may be subject to some of the annoyances or inconveniences
34 associated with proximity to airport operations (for example: noise,
35 vibration, or odors). Individual sensitivities to those annoyances can vary
36 from person to person. You may wish to consider what airport
37 annoyances, if any, are associated with the property before you complete
38 your purchase and determine whether they are acceptable to you.
39

(2) For purposes of this section, an “airport influence area,” also known as an “airport referral area,” is the area in which current or future airport-related noise, overflight, safety, or airspace protection factors may significantly affect land uses or necessitate restrictions on those uses as determined by an airport land use commission.

(3) If the property is within the jurisdiction of the San Francisco Bay Conservation and Development Commission, as defined in Section 66620 of the Government Code, a declaration recorded on or after January 1, 2006, shall contain the following notice:

NOTICE OF SAN FRANCISCO BAY CONSERVATION AND
DEVELOPMENT COMMISSION JURISDICTION

This property is located within the jurisdiction of the San Francisco Bay Conservation and Development Commission. Use and development of property within the commission’s jurisdiction may be subject to special regulations, restrictions, and permit requirements. You may wish to investigate and determine whether they are acceptable to you and your intended use of the property before you complete your transaction. ~~The~~

(4) ~~The~~ statement in a declaration acknowledging that a property is located in an airport influence area or within the jurisdiction of the San Francisco Bay Conservation and Development Commission does not constitute a title defect, lien, or encumbrance.

(b) The declaration may contain any other matters the original signator of the declaration or the owners consider appropriate.

~~SEC. 4. Section 66633 of the Government Code is amended to read:~~

~~66633. The commission may:~~

~~(a) Accept grants, contributions, and appropriations from a public agency, private foundation, or individual.~~

~~(b) Appoint committees from its membership and appoint advisory committees from other interested public and private groups.~~

~~(c) Contract for or employ any professional services required by the commission or for the performance of work and services that in its opinion cannot satisfactorily be performed by its officers~~

1 ~~and employees or by other federal, state, or local governmental~~
2 ~~agencies.~~

3 ~~(d) Sue and be sued in all actions and proceedings and in all~~
4 ~~courts and tribunals of competent jurisdiction, including~~
5 ~~prohibitory and mandatory injunctions to restrain violations of this~~
6 ~~title.~~

7 ~~(e) Make grants and do any and all other things necessary to~~
8 ~~carry out the purposes of this title.~~

9 ~~SEC. 5.~~

10 *SEC. 4.* Section 66637 of the Government Code is amended
11 to read:

12 66637. (a) When the executive director determines that a
13 person or governmental agency has undertaken, or is threatening
14 to undertake, an activity that (1) may require a permit from the
15 commission without securing a permit; or (2) may be inconsistent
16 with a permit previously issued by the commission, the executive
17 director may issue an order directing that person or governmental
18 agency to cease and desist.

19 (b) A cease and desist order issued by the executive director
20 may be subject to the terms and conditions that the executive
21 director may determine are necessary to ensure compliance with
22 this title, including the immediate removal of any fill or other
23 material where that removal is necessary to avoid irreparable
24 injury to an area within the jurisdiction of the commission pending
25 action by the commission under Section 66638.

26 (c) A cease and desist order issued by the executive director
27 shall become null and void 90 days after issuance.

28 (d) A cease and desist order issued by the executive director
29 shall be effective upon the issuance thereof, and copies shall be
30 served forthwith by certified mail upon the person or
31 governmental agency being charged with the actual or threatened
32 violation of this title. A copy of the cease and desist order shall also
33 be sent by certified mail to the owner of the property on which the
34 violation occurred.

35 ~~SEC. 6.~~

36 *SEC. 5.* Section 66638 of the Government Code is amended
37 to read:

38 66638. (a) When the commission, after public hearing,
39 determines that a person or governmental agency has undertaken,
40 or is threatening to undertake, an activity that (1) requires a permit

from the commission without securing a permit, or (2) is inconsistent with a permit previously issued by the commission, the commission may issue an order requiring the person or governmental agency to cease and desist.

(b) A cease and desist order issued by the commission may be subject to the terms and conditions that the commission may determine are necessary to ~~insure~~ ensure compliance with this title, including immediate removal of any fill or other material or the setting of a schedule within which steps must be taken to obtain a permit pursuant to this title.

(c) Notice of the public hearing on a proposed cease and desist order shall be given to all affected persons and agencies and the order shall be effective and final as to the commission upon issuance thereof. Copies shall be served forthwith by certified mail upon the person or governmental agency being charged with the actual or threatened violation of this title and upon other affected persons and agencies who appeared at the hearing and requested a copy. A copy of the cease and desist order shall also be sent by certified mail to the owner of the property on which the violation occurred.

~~SEC. 7.~~

SEC. 6. Section 66640 of the Government Code is amended to read:

66640. (a) Upon the failure of a person to comply with a permit, *or* a cease and desist order issued by the executive director or the commission, or with any provision of this title, the Attorney General, upon request of the commission, shall petition the superior court for the issuance of a preliminary or permanent injunction, or both, as may be appropriate, restraining the person or persons from continuing any activity in violation of the permit, order, or provision of this title.

(b) The evidence before the court shall consist of the record before the executive director or the commission, *whoever initially issued the order*, and any other relevant evidence that, in the judgment of the court, should be considered to effectuate and implement the policies of this title. In every case brought under this section, the court shall exercise its independent judgment on the evidence.

(c) The court shall issue an order directing defendants to appear before the court at a time and place certain and show cause why the

1 injunction should not be issued. The court may grant any
2 prohibitory or mandatory relief that may be warranted.

3 (d) The court may stay the operation of the cease and desist
4 order after notice to the executive director or the commission,
5 whichever initially issued the order, and hearing. The stay may be
6 imposed or continued only if it is not against the public interest.

7 ~~SEC. 8.~~

8 *SEC. 7.* Section 66641.5 of the Government Code is amended
9 to read:

10 66641.5. (a) In addition to any other penalties, any person or
11 entity who violates this title is subject to a civil penalty of not to
12 exceed thirty thousand dollars (\$30,000). In determining the
13 amount of a civil penalty, the court shall consider the factors listed
14 in subdivision (a) of Section 66641.9.

15 (b) In addition to any other penalties, any person or entity who
16 intentionally and knowingly undertakes any activity requiring a
17 permit pursuant to subdivision (a) of Section 66632 without that
18 permit, or who intentionally and knowingly violates any term or
19 condition of any permit issued by or on behalf of the commission,
20 is subject to a civil penalty of not less than one hundred dollars
21 (\$100), nor more than ten thousand dollars (\$10,000), per day for
22 each day in which that violation occurs or persists.

23 (c) Except as provided in Section 818, whenever a person or
24 entity has intentionally and knowingly violated this title or any
25 term or condition of a permit issued by or on behalf of the
26 commission, the commission may maintain an action, in addition
27 to the actions authorized pursuant to subdivisions (a) and (b), for
28 the recovery of exemplary damages. In determining the amount to
29 be awarded, the court shall consider the amount of damages
30 necessary to deter further violations.

31 (d) In addition to any other penalties, a person or entity who
32 negligently undertakes an activity requiring a permit pursuant to
33 subdivision (a) of Section 66632 without that permit, or who
34 negligently violates any term or condition of any permit issued by
35 or on behalf of the commission, is subject to a civil penalty of not
36 less than fifty dollars (\$50) nor more than five thousand dollars
37 (\$5,000) per day for each day in which that violation occurs or
38 persists.

39 (e) Civil liability may be administratively imposed by the
40 commission in accordance with Section 66641.6 on any person or

entity for any violation of this title or any term or condition of a permit issued by or on behalf of the commission in an amount that shall be not less than ten dollars (\$10), nor more than two thousand dollars (\$2,000), for each day in which that violation occurs or persists, but the commission may not administratively impose a fine of more than thirty thousand dollars (\$30,000) for a single violation.

(f) Any moneys recovered by the commission pursuant to this section shall be deposited in the fund established and administered pursuant to Section 66647.

SEC. 8. Section 66648 is added to the Government Code, to read:

66648. Fees collected by the commission pursuant to conditions imposed on permit applicants to mitigate the adverse impacts of permitted development, and any funds paid into the Bay Fill Clean-up and Abatement Fund established by Section 66647, may be transferred to the subaccount of the San Francisco Bay Area Conservancy Program Account established under subparagraph (B) of paragraph (1) of subdivision (b) of Section 31164 of the Public Resources Code or to a substantially similar account in a coastal trust fund, or its equivalent if enacted into law, with the concurrence of the State Coastal Conservancy, to be expended by the conservancy pursuant to its authority under Division 21 (commencing with Section 31000) of the Public Resources Code to carry out the mitigation required under the commission's permit, or for the purposes set forth in subdivision (b) of Section 66647, as determined by the commission.

CORRECTIONS

Text — Page 11.